

August 9, 1935.

Mr. Charles P. Mullen,
State Land Commissioner,
State Building,
Phoenix, Arizona.

Dear Mr. Mullen:

You have transmitted three letters from Mr. D. B. Morgan, Attorney at Law, of John Page & Company, land attorneys. In these three letters Mr. Morgan calls to your attention three cases which have been appealed from the State Land Department to the Superior Courts of the several counties in which the lands in question are located. These three cases on appeal, as stated in Mr. Morgan's letters, are as follows:

Hosea Lee, Appellant vs. Three Links Cattle Company,
Appellee
Roy M. Spencer, Appellant vs. Three Links Cattle Company,
Appellee
Guy Perry, Appellant, vs. Howell Manning, Appellee.

As stated in Mr. Morgan's letters, notices of appeal of the above entitled cases were served upon John H. Page & Company, as attorneys for the above named appellees. Your records show that these notices of appeal were served on the State Land Department within the time prescribed by Section 2966, R. C. A. 1928.

After setting up these facts, Mr. Morgan further states that no notices of appeal were filed with the clerk of the court of the several superior courts at the time such appeal was taken, and has enclosed certificates from the several clerks of the court, showing that no notice of appeal has been served on said courts to date. Mr. Morgan, requests that you issue leases to the above named appellees, for the reason that notices of appeal were not served upon the several clerks of the superior court, stating that such notices of appeal is required by our statutes, and that failure to file such notice, fails to confer jurisdiction on the several superior courts to review the findings of the State Land Department. In support of his contention, Mr. Morgan has submitted abundance of authority. However, we feel that Mr. Morgan has incorrectly interpreted the law, and that the authorities he cites apply only to giving notice of appeal to the adverse party and to the court from which the appeal is taken, and not the giving of such notice to the appellate court.

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A study of the statutory provisions regarding appeals will amply clarify the matter.

Section 2966 R. C. A. 1928, provides:

"An applicant to lease state land may appeal from a decision of the commissioner to the department, and from the department to the superior court of the county in which the land is situated. The party appealing shall give notice in writing to the commissioner or department from whose decision the appeal is taken and to the adverse applicant, within twenty days from the rendition of the decision. (Underseering ours)

This section not prescribing the manner of taking an appeal from the state land department to the superior court, the rule stated in Section 3692, R. C. A. 1928, applies, in so far as the law relating to prosecuting an appeal from the Justice Court is not inconsistent with the law governing proceedings before the land department. (Davis vs. Campbell, 24 Ariz. 77). Section 3692, supra, provides:

"Whenever the right of appeal to the superior court, from an officer, board or commission is granted and the manner of taking such appeal and the procedure thereon is not prescribed, the laws relating to the taking of appeals from courts of justices of the peace shall apply insofar as conformable."

The manner of taking an appeal from a judgment of a justice of the peace is prescribed in Sections 4204, 4205 and 4206, R. C. A. 1928, as follows:

Section 4204: "The party appealing shall give notice thereof in open court at the time the judgment is rendered, or by serving a written notice thereof upon the adverse party, within five days thereafter, and shall within ten days from the date of the judgment, file with the justice a bond to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that the appellant shall prosecute his appeal to effect, and shall satisfy the judgment which may be rendered against him on such appeal."

Section 4205: "When an appeal has been taken the justice shall make a certified copy of all entries made on his docket in the action and transmit the same, together with a certified copy of the bill of costs and the original papers in the action to the clerk of the superior court."

Section 4206: "The copy of the docket entries and other papers shall be transmitted to the clerk of the superior court within ten days after the filing of the bond on appeal."

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In passing upon the applicability of the procedure in appealing from justices of peace to appeals from the State Land Department, our Supreme Court in the case of Davis vs. Campbell, supra, held:

"We see no insurmountable difficulty in applying the statutory rule for appeals from courts of justices of the peace to appeals from the land department. Because the exact steps prescribed in taking an appeal from courts of justices of the peace, and the procedure thereon, cannot be followed in an appeal from the land department to the superior court is no reason why such procedure may not be adopted in so far as it is not inconsistent with the law governing proceedings before the land department. For instance, the fact that an appeal from a justice court is perfected by giving notice thereof in open court, or written notice within five days after the rendition of the judgment, and within ten days thereafter filing an appeal bond, whereas under the Land Code, as amended, the notice of appeal may be taken any time within twenty days from the rendition of the decision by the commissioner or the land department, does not make the procedure, under the latter act, indefinite or uncertain. The justice of the peace is required to make out a true and correct copy of all the entries made in his docket in the cause, and certify thereto officially, and transmit the same, together with a certified copy of the bill of costs and original papers in the cause, to the clerk of the superior court, and by analogy the commissioner of the land department should certify to the superior court the minute entries in contests for leases. Together with the original papers to the superior court, as he is given authority to authenticate all papers emanating from his office. #####"

From a reading of the above quoted sections it is most apparent that the mandatory provisions regarding notices of appeal apply only to the serving of notice of appeal to board, commission or justice of peace from whose decision the appeal is being taken, and to the adverse party. No provision is found requiring that notice of appeal must be given to the appellate court. It is apparent, from a reading of Sections 4204, 4205 and 4206, supra, together, that the first notice an appellate court is given of a pending appeal, is when the transcript of the proceedings is filed in the office of the clerk of the superior court by the inferior board, commission or tribunal.

The last sentence of Section 2966, supra, provides as follows:

"#####Thereafter such proceedings shall be had in the superior court as on an appeal from an appraisalment." (Underscoring ours)

Sections 2962 and 2963, R. C. A. 1928, regarding appeals from an appraisalment, provide:

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Section 2962: "####Immediately upon the service of such notice, the commissioner shall prepare a transcript containing the names of the appraisers, the report and return made by them, all proceedings had in the matter and notice of appeal, together with evidence of service thereof, and transmit the same to the clerk of the proper superior court, who shall docket the appeal in the name of the appellant as plaintiff, and appellee as defendant, and said appeal shall then stand for trial." (Underscoring ours)

Section 2993: "Said appeal shall be set for trial and heard at the earliest practicable date by the court, without a jury. ####"

A review of the statutes and decisions quoted leads only to the final conclusion that notice of appeal does not have to be filed with the Clerk of the Superior Court at the time an appeal is taken from the State Land Department. It is evident from a reading of the statutory provisions, and cases cited by Mr. Morgan that the superior court of a county, as the appellate court, does not receive any notice of an appeal from the State Land Department until the transcript of the proceedings is filed with the clerk of that court by the state land commissioner.

For the reasons and authorities cited it is the opinion of the Attorney General that Mr. Morgan's request that you immediately issue leases to his client, for reason of an imperfected appeal, be denied, and that you forthwith transmit to the clerks of the respective superior courts, your transcript as required by law.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

By

ELMER C. COKER
Assistant Attorney General.